

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:	: CASE NO.: 21-42554-ess
	:
	: CHAPTER: 7
James D. Henry,	:
	: HON. JUDGE:
	:
Debtor.	: Elizabeth S. Stong
	:
	: HEARING DATE: February 8,
	: 2022 at 10:30 A.M.
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NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY

PLEASE TAKE NOTICE, that upon the application of Rushmore Loan Management Services, LLC as servicer for U.S. Bank National Association, as Trustee of the Dwelling Series IV Trust (together with any successor or assign, “Movant”), the undersigned shall move this Court for an Order, pursuant to 11 U.S.C. §§ 362(d)(1)-(2), (i) vacating the automatic stay to permit Movant, its successors and assigns, to enforce its mortgage on the Debtor’s premises located at 555 Union Hill Road, Marlboro, NJ 07726 aka 555 Union Hill Road, Englishtown, NJ 07726; (ii) granting reasonable attorney’s fees and costs; and (iii) for such other and further relief as is just and proper.

This motion shall be heard at the United States Bankruptcy Court, Eastern District of New York, Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Courtroom 3585, Brooklyn, New York 11201-1800, on the 8th day of February 2022 at 10:30 a.m. or as soon thereafter as counsel may be heard.

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PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the return date of this motion.

Dated: Fresh Meadows, New York
January 6, 2022

By: /s/ Katherine Heidbrink
Katherine Heidbrink, Esq.
FRIEDMAN VARTOLO LLP
Attorneys for Movant
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TO:

James D. Henry
7281 Amboy Road
Staten Island, NY 10307
Debtor

James D. Henry
555 Union Hill Road
Marlboro, NJ 07726
Debtor

Rachel S. Blumenfeld
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Brooklyn, NY 11242
Debtor's Attorney

David J. Doyaga
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Brooklyn, NY 11242
Trustee

Office of the United States Trustee
Eastern District of NY (Brooklyn Office)
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, NY 10014
U.S. Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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	:	CHAPTER: 7
James D. Henry,	:	
	:	HON. JUDGE:
	:	
Debtor.	:	Elizabeth S. Stong
	:	
	:	HEARING DATE: February
	:	8, 2022 at 10:30 A.M.
	:	

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**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY REGARDING REAL PROPERTY**

Katherine Heidbrink, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District for the Eastern District of New York, hereby affirms the following to be true under penalty of perjury:

Rushmore Loan Management Services, LLC as servicer for U.S. Bank National Association, as Trustee of the Dwelling Series IV Trust (together with any successor or assign, “Movant”) hereby moves this Court, pursuant to 11 U.S.C §§ 362(d)(1)-(2); (i) for relief from the automatic stay with respect to certain real property of the Debtors having an address of 555 Union Hill Road, Marlboro, NJ 07726 aka 555 Union Hill Road, Englishtown, NJ 07726 (the “Property”) for all purposes allowed by law, the Note (defined below), the Mortgage (defined below), and applicable law; (ii) granting reasonable attorney’s fees and costs; and (iii) for such other and further relief as is just and proper. In support of this Motion, Movant respectfully states:

FACTUAL HISTORY

1. Movant is a secured creditor of the Debtor pursuant to Note executed by James Henry aka James D. Henry (hereinafter the “Debtor”) on September 28, 2007, whereby the Debtor promised to repay \$417,000.00 plus interest to HSBC Mortgage Corporation (USA) (the “Note”). To secure the repayment of the Note, the Debtor executed a Mortgage in favor of Mortgage Electronic Registration Systems, Inc. as nominee for HSBC Mortgage Corporation (USA), which was recorded on October 19, 2007, in the Monmouth County Clerk’s Office in Book: OR-8684, Page: 2122 (the “Mortgage,” Note and Mortgage, collectively, the “Loan”) encumbering the Property. The Loan was subsequently assigned to Movant by an assignment of mortgage recorded on November 9, 2021 (the “Assignment of Mortgage”). Copies of the Note, Recorded Mortgage and Assignments of Mortgage are attached hereto as **Exhibit A**.

2. The instant bankruptcy case was filed under Chapter 7 of the United States Bankruptcy Code with respect to the Debtor on October 7, 2021.

LEGAL ARGUMENT

3. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Loan remains post-petition due for November 1, 2021 and contractually due for the January 1, 2009 payment.

4. Pursuant to 11 U.S.C. § 362(d)(1), the court shall enter an order granting a Secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

5. Specifically, courts have found cause for the granting of relief from an automatic stay where the Debtors have failed to make post-petition mortgage payments as they become due. In Re Taylor, 151 B.R. 646, 648 (Bankr. E.D.N.Y. 1993).

6. Pursuant to a payoff quote from the Movant, the Debtor's outstanding obligation as of December 2, 2021, less any partial payments or suspense balance, is approximately \$970,569.00.

7. Movant's Mortgage is a first mortgage against the Property. Based upon the Debtors' Schedule A/B, the Property has an estimated value of approximately \$864,100.00. The total debt due to Movant is approximately \$970,569. A copy of the Debtor's Schedule A/B is attached hereto as **Exhibit B**.

8. A copy of the Relief from Stay-Real Estate and Cooperative Apartments ("Affidavit") is attached hereto as **Exhibit C**.

9. For the reasons indicated above, there is no equity in the Property, and the Property is not necessary to an effective reorganization of the Debtor in this Ch. 7 liquidation. Additionally, the Property is investment property and not the Debtor's primary residence. As such, relief pursuant to 11 U.S.C. § 362(d)(2) is also appropriate.

10. Movant respectfully requests \$950 in attorney's fees and \$188 in filing costs for the preparation and filing of the instant Motion.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. §§ 362(d)(1)-(2); granting reasonable attorney's fees and costs; and for such other, further and different relief as to this Court may deem just,

proper and equitable.

Dated: Fresh Meadows, New York
January 6, 2021

By: /s/ Katherine Heidbrink
Katherine Heidbrink, Esq.
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